IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 353 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RPG LIFE SCIENCE LTD. KNOWN ASSEARLE INDIA LTD.
Versus
COMMISSIONER OF SALES TAX

Appearance:
MR KH KAJI for Petitioner
GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 07/02/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

By means of filing this petition under Article 226 of the Constitution, the petitioner has prayed to issue an appropriate writ or order and direct the respondents to issue sales exemption certificate for Rs. 2300.28 lacs under new Entry 69 of the Notification issued by the State Government under section 49(2) of the Gujarat Sales Tax Act, 1969 pursuant to eligibility certificate dated April 29, 2000 granted by the Additional Commissioner (Ext.), Industries Commissionerate. The petitioner has further prayed to restrain the respondents from taking any action against the petitioner's sellers for not recovering sales tax from the petitioner in that behalf.

2. The petitioner is a Public Limited Company. Formerly it was known as M/s. Searle (India) Limited. The petitioner is having a manufacturing plant at Panoli, District Bharuch for manufacture of various type of pesticides. The petitioner made an application for exemption certificate to the Industries Commissioner as required by the Sales Tax Incentive Scheme. The petitioner was granted registration for Sales-tax Incentive Scheme on February 23, 1998 and the petitioner was given an adhoc eligibility certificate for Rs. 717 lacs on April 23, 1999 by the Additional Industries Commissioner. After visit of the factory by the officers of the Industries Commissionerate, final eligibility certificate for Rs. 2300.28 lacs was issued in favour of the petitioner on April 29, 2000, which is produced at Annexure-A to the petition. The petitioner thereafter approached respondent no.3 for issuance of sales-tax exemption certificate under new Entry 69 of the Notification issued by the State Government under section 49(2) of the Gujarat Sales-tax Act,1969 ('the Act' for short) vide application dated April 28, 1999. The petitioner has averred that the petitioner's officers visited the office of respondent no.3 from time to time to obtain sales-tax exemption certificate, as the same was urgently required by the petitioner for issuing necessary certificate in Form-40 to the sellers of various goods, to the petitioner as provided by the Act, Rules and Forms, but respondent no.3 informed the representative of the petitioner that he has referred the matter to respondent no.1 for obtaining his directions. According to the petitioner, on several occasions the petitioner approached respondent no.3 to inquire whether directions were received from respondent no.1, but the petitioner was informed that no direction was received by respondent no.3 from respondent no.1. Thus, according to the petitioner, said application is lying undecided. In

the petition, the petitioner has mentioned that the petitioner has made application dated March 5, 2000 to the respondent no.1, but the same is also neither decided nor answered. According to the petitioner, because of non-issuance of exemption certificate, sellers of various goods are put to avoidable inconvenience and the petitioner is suffering great hardship, as it cannot issue certificate in Form 40 to its various vendors so as to avail itself of sales-tax exemption. Under the circumstances, the petitioner has filed present petition and claimed reliefs to which reference is made earlier.

3. The petition was placed for admission hearing before the Court on January 17, 2001 and after hearing the learned counsel for the petitioner, notice for final disposal of the matter was ordered to be issued making it returnable on January 29, 2001. Though served, no one appears on behalf of the respondents.

4. We have heard the learned counsel for the petitioner and taken into consideration the documents forming part of the petition. From the record of the case, it is evident that the petitioner had made an application dated April 28, 1999 to respondent no.3 for issuance of exemption certificate. This is quite evident from Annexure-B to the petition, which is a letter dated April 28, 1999 addressed by the petitioner to respondent no.3. Thereafter another application dated March 5, 2000 was made by the petitioner to respondent no.1 requesting him to issue exemption certificate. That letter is produced at Annexure-B to the petition. The record of the case does not indicate that the respondent no.3 has rendered any decision on application dated April 28, 1999, nor the record shows that the respondent no.1 has decided application dated March 5, 2000. Under the circumstances, we are of the opinion that interest of justice would be served if respondents no.1 & 3 are directed to decide the applications as early as possible within the time to be stipulated in this order.

For the foregoing reasons, the petition partly succeeds. Respondent no.3 is directed to decide application dated April 28, 1999 made by the petitioner for issuance of exemption certificate as early as possible and preferably within one month from the date of receipt of writ. Similarly, respondent no.1 is directed to decide application dated March 5, 2000 submitted by the petitioner for issuance of exemption certificate as early as possible and preferably within one month from the date of receipt of writ. Office is directed to send copy of this order to respondents no.1 & 3 immediately

for necessary compliance. It would also be open to the petitioner to produce copy of this order before respondents no.1 & 3 for necessary compliance.

(J.M.Panchal,J.)

(M.S.Shah, J.)